

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

FIRST TRANSIT, INC.

Employer

and

Case 19-RC-14530

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
DISTRICT LODGE 160, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record<sup>1</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>2</sup>

**SUMMARY**

The Employer is a private corporation, which operates the commuter bus services for Snohomish County, Washington. The Petitioner seeks to represent individuals employed as field supervisors and dispatchers employed in the Employer's operations. The Employer contends these individuals are supervisors within the meaning of Section 2(11) of the Act and,

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<sup>1</sup> The Petitioner filed a brief, which was duly considered.

<sup>2</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

thus, the Petitioner's proposed unit is inappropriate for purposes of a collective bargaining. On the other hand, the Petitioner contends the field supervisors and dispatchers are not 2(11) supervisors and, therefore, a unit composed of these employees is appropriate in which to direct an election in this case. Neither party disputes the appropriateness of such a unit if the field supervisors and dispatchers are found not to be supervisors.

Based on the record evidence and the arguments advanced by the parties, I conclude that the field supervisors and dispatchers are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall direct an election in the unit sought by Petitioner.

Below, I have provided a section setting forth the record evidence relating to background information about the Employer's operations and relating to the duties and responsibilities of the field supervisors and dispatchers. Following the evidence section is my analysis of the applicable legal standards in this matter, and a section directing an election in this case.

## **I.) EVIDENCE<sup>3</sup>**

### **A.) Background Information Relating to the Employer's Operations**

As outlined above, the Employer operates a commuter portion of Snohomish County's public bus service. The Employer is responsible for the operation, maintenance and supervision of the workforce. Snohomish County provides the vehicles, facilities (including a storage yard) and some maintenance equipment. The Employer provides the workforce, supervisors, managers and administrative staff.<sup>4</sup> The Employer manages all aspects of the commuter bus service. The Employer employs 155 bus drivers to operate the bus routes primarily during the peak commuting hours in the morning and evening.

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<sup>3</sup> The Employer provided no witness testimony at the hearing other than through the Hearing Officer's questioning of the Employer's representative, who was present at the hearing.

<sup>4</sup> Among others, the Employer's workforce includes the drivers, maintenance employees, field supervisors and dispatchers. Amalgamated Transit Union (ATU) represents the drivers and the Petitioner represents the maintenance employees. ATU and the Employer are party to a collective-bargaining agreement, which, in addition to drivers, also covers casual drivers employed by the Employer.

The Employer also employs about 14 field supervisors and dispatchers out of which up to four field supervisors and one dispatcher may staff any given shift depending on the workload. The field supervisors and dispatcher report to either an “a.m.” or “p.m.” operations supervisor depending on the time when they report to work. The operations supervisors report to the assistant general manager, Michael Winters, who in turn reports to the general manager, Ken Rutz.<sup>5</sup> The Employer’s operations run nearly 24 hours a day and begin at 3:00 a.m. and conclude at 1:30 a.m. the next morning, on a daily basis.

**B.) The Field Supervisors**

The field supervisors oversee the start of the workday at the bus storage yard. At the yard, field supervisors ensure the buses leave on time and attempt to deal with drivers’ questions and issues relating to maintenance, timeliness and order of departure. The field supervisors do move buses around the storage yard as needed and on rare occasions drive a route. Once the buses are underway for the day, the field supervisors have pre-assigned areas of responsibility and they drive to check points, such as park-and-ride lots, in mini-vans or sedans provided by the Employer. The Employer provided vehicles have two-way radios for communication, Employer identifications and are designated as supervisor vehicles.

At the checkpoints, the field supervisors record, on Employer provided forms, the arrival and departure times of the buses. Additionally, the field supervisors also provide assistance with regard to accidents, construction delays and passenger issues. When the need for such assistance arises, the Employer’s dispatcher contacts and dispatches the field supervisor, who is closest to the area of need.

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<sup>5</sup> The parties stipulated that the two operations supervisors, the assistant general manager and the general manager possess one or more of responsibilities, which qualify them as supervisors under Section 2(11) of the Act. Accordingly, I shall exclude them from the unit in accordance with the parties’ stipulation.

In the event of an accident, the field supervisor checks for injuries and arranges for any additional assistance. The field supervisor also completes an accident report, interviews witnesses, takes photographs, and arranges for towing if necessary. The accident report simply records information or facts surrounding the accident. The report does not assign blame or responsibility and does not recommend any action. If the accident results in personal injury or the need to tow a vehicle, the field supervisor is required to transport the driver to a designated clinic for drug testing pursuant to mandatory DOT regulations. The record reveals that accidents resulting in the need for drug testing, are a rare occurrence.

The field supervisor also assists with mechanical problems and usually is the first on the scene when such incidents occur. The field supervisor assists the operator with trouble shooting and if they cannot resolve the problem, then the Employer's maintenance department is brought into the picture either over the radio or in person.

With respect to construction delays or blocking accidents that do not involve the Employer's drivers, field supervisors may explore the possibility of re-routing the commuter buses. In some cases, a field supervisor may be required to have a driver/bus leave a checkpoint (e.g., park-in-ride lot) early to compensate for another bus that is having problems.

Field supervisors also interact with passengers to resolve problems such as fare disputes and may discuss improper procedures or conduct with drivers, such as speeding, improper parking, and similar matters. If a driver's conduct warrants additional attention, the field supervisor fills out an Employer form or incident report, which essentially calls for the recording of the circumstances or facts surrounding the reported incident. Similar to the accident report, these incident reports do not allow for the field supervisor to make any recommendations about the incident. Rather, the record discloses that the operation supervisors or Mike Winters determine whether additional action should be taken against the driver, without consulting the field supervisors. Moreover, the field supervisors have no access

to driver personnel files and have no knowledge of a driver's history when filling out accident or incident reports.

With respect to pay, field supervisors are hourly employees, eligible for overtime and earn \$13.90 per hour. They do not have offices but do have an area for filling out paperwork. Drivers, on the other hand, earn anywhere from approximately \$10.00 to \$17.00 per hour depending on longevity.<sup>6</sup> Field supervisors are assigned their respective shifts depending on their seniority and serve as dispatchers on the weekends on a rotating basis.

During the day, the Employer stores the buses, used in its operations, at a storage yard located in Seattle, Washington.<sup>7</sup> From this Seattle location, the Employer shuttles drivers back to Snohomish County (Everett, Washington) rather than bringing the buses back north. In this regard, the field supervisors oversee the parking arrangements at this storage yard and monitor proper bus locations, which are pre-assigned, and operation of the buses in the yard much as they do when the day starts in the morning.

Field supervisors play no role in hiring or firing of any employees. However, some do participate in the promotion process for new dispatchers or new field supervisors. These positions are filled from the ranks of the drivers and a key part of the selection process is a committee interview. In this interview, the applicant is questioned by a committee of five individuals, which usually consists of Rutz, Winters, two operations supervisors, and either a dispatcher or field supervisor. Each member of the committee uses a pre-printed list of questions and they rotate asking the questions set forth on the list. Each committee member then grades the applicant's answers on a scale from 1-5. The total scores are used to decide which applicant gets the position. The questions on this list are fixed. Consequently, the committee members are not able to vary from the list of questions. The field supervisor and

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<sup>6</sup> About a third to a fourth of the drivers make \$17 per hour.

<sup>7</sup> Seattle is located in King County, which is immediately south of Snohomish County.

dispatcher complement is fairly stable and there have only been a couple of openings in the past 2 years. Accordingly, only two field supervisors and one dispatcher have participated in this committee interviewing process during the past 2 years.

**C.) The Dispatchers**

The dispatchers essentially hand out route assignments to drivers and ensure that buses are timely dispatched. The routes are bid by seniority three times a year and the drivers operate their assigned runs on a routine, regular basis. There are also “extra board”<sup>8</sup> bids for extra shifts and these are also bid on by the drivers. The Employer utilizes “casual” drivers (not a bid position) who must work a minimum of five days per month. The casual either calls in and tells the dispatcher they are available that day or it is common knowledge they are available for work only on certain days and the dispatcher can call those individuals on those certain days.

The drivers report in to the dispatcher at the beginning of an assigned shift and the dispatcher notes their presence. If a driver is late reporting for work, the dispatcher replaces the late driver and, like the field supervisors, fills out a form, which only reports the tardiness of the driver to uncontested supervisors or managers.

When drivers are on vacation, the dispatcher usually gives the vacationing driver's route to a casual driver. The dispatchers also fill vacancies due to sick leave and similar unforeseen events and, in this regard, attempt to fill these unexpected vacancies with qualified casuals (individuals who know the route) and to save the “extra board” drivers for emergencies because they are qualified for driving all routes. Dispatchers also record any changes to route assignments and the reason(s) for such and forward that information onto Employer supervision and/or management. Notwithstanding the foregoing, the record does not disclose what, if any, independent judgment is exercised by the dispatchers with regard to the use of casual drivers or extra board drivers.

As indicated above, the dispatcher is the first point of contact for all emergencies (accidents, breakdowns, passenger incidents). Following such contact, the dispatcher relays the information to the field supervisors or the operations supervisors, who along with dispatchers, work in the Employer's main office or are able to contact one another and Rutz either personally or via the Employer's radio system.

Dispatchers also have no role whatsoever in the hiring and firing processes. Their participation in the selection committee process for filling vacancies is identical to that of the field supervisors as described above.

Dispatchers have a limited role in assigning overtime. The dispatchers get a daily computer report on drivers work hours. With these reports, the dispatchers attempt to limit overtime earned by drivers. However, the dispatcher's primary concern is to keep the routes staffed and will ignore the accrual to overtime to insure full staffing.

As noted above, field supervisors operate as dispatchers on the weekends and perform the same duties as dispatchers except that the system operates at a much-reduced level on the weekends. On the occasions when there is an unusual event after normal hours, the dispatchers page management (operations supervisors, assistant and/or general manager) to receive instructions on how to proceed concerning the unusual event.

## **II.) ANALYSIS**

The record in this case revolves around the issue of whether the field supervisors and/or the dispatchers possess indicia of supervisory authority as that term is defined in Section 2(11) of the Act. Section 2(11) of the Act defines a supervisor as:

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<sup>8</sup> These employees are guaranteed a set workweek no matter how many hours they actually drive.

[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well settled that Section 2(11) of the Act is to be read in the disjunctive and that possession of any one of the enumerated indicia establishes supervisory status as long as the performance of the function is not routine or clerical in nature but rather requires a significant degree of independent judgment. *Stephen Produce Co., Inc.* 214 NLRB 131 (1974); *NLRB v. Kentucky River Community Care, Inc.* 532 U.S. 706 (2001). “A worker is presumed to be a statutory employee and the burden of proving a worker is a supervisor within the meaning of Section 2(11) of the Act falls on the party who would remove the worker from the class of workers protected by the Act.” *Hicks Oil & Hickgas, Inc.*, 293 NLRB 84 (1989); *Kentucky River Community Care*, supra. Here, the burden of proving that the field supervisors and/or dispatchers are supervisors, lies with the Employer who is asserting such status.

**A.) Field Supervisors**

The Employer appears to assert that the field supervisors assign work to drivers or responsibly direct them in their work. Yet the record does not support such an assertion. In particular, the record reveals that at the outset of their workday in the storage yard, the field supervisors assist drivers with the goal of leaving the yard in a timely and safe fashion. It also appears that drivers are similarly responsible for insuring the timely and safe performance of their work whether it relates to leaving the yard, driving their routes, or when returning to the storage yard at the end of the workday. Regardless, there is nothing in the record that would support the assertion that field supervisors assign work or direct the drivers in their work at the yard. Rather, field supervisors have no meaningful independent authority to assign work. The schedules are set by contract and/or company policies and are then relayed to the drivers by the dispatchers. While the field supervisors can slightly alter certain schedule times to



accommodate accidents or traffic delays, they cannot re-assign individuals to different routes, different job functions, or work assignments.

While I note that, in the field, field supervisors do inform the drivers that they may be speeding, parking improperly, or failing to adhere to other standards of conduct, the record is devoid of any instances establishing that the field supervisors' possess authority to responsibly direct the drivers in their route assignments. Any arguable possession of such authority is rather routine in nature in that the field supervisor is merely adhering to well-established, standardized conduct by informing the drivers of such conduct and by assisting drivers in the yard or the field with the safe and timely performance of drivers' route assignments. With regard to the end of the workday back in the yard, field supervisors essentially observe whether buses enter the yard in accordance with an established practice and that the drivers park their respective buses their assigned locations.

In light of the above and the record as a whole, I find that the record reveals insufficient evidence to support an assertion that the field supervisors assign work or responsibly direct employees in their work. See *Hicks Oil*, supra and *Mid-State Fruit, Inc.*, 186 NLRB 51 (1970).

The Employer does not assert that field supervisors possess the authority to hire or discharge employees. Yet with regard to discipline, the Employer asserts that the field supervisors possess such authority. In this regard, the record discloses that the field supervisors' disciplinary role amounts to nothing more than recording and reporting the circumstances or facts surrounding driver accidents or incidents for submission to Employer supervision and/or management who, in turn, is then responsible for taking appropriate or further action on the records/reports. Other than recording and reporting accidents or incidents, the field supervisors do not participate in the disciplinary process and, in particular, make no recommendations with regard to their records/reports, and this is equally applicable to field supervisors reports/records concerning the timely departure and arrival of drivers at Employer

designated locations. Indeed, Employer supervision and/or management do not consult with the field supervisors regarding disciplinary actions resulting from their records/reports. Such reportorial functions do not constitute the authority to discipline or to effectively recommend the discipline of employees. See *Ten Broeck Commons*, 320 NLRB 806, 812 (1996), where the Board held that written reports and warnings issued by the nurses, which had no independent impact on employees' job tenure or status, did not warrant finding that these nurses were supervisors. Here, the field supervisors' alleged disciplinary authority is no more substantial than the disciplinary role performed by the nurses in *Ten Broeck Commons*.

The Employer further appears to assert that field supervisors participate in the promotion of drivers to field supervisor or dispatcher positions due to their role on the interview committee. However, this role does not sufficiently qualify the field supervisors as supervisors. While in *Entergy Systems & Service*, 328 NLRB 902 (1999), the Board found "crew leaders" to be supervisors on the basis of their authority to collectively agree on promoting members of their respective crews, there, the crew leaders had much more extensive, autonomous authority concerning their crewmembers than is present here. The crew leaders in *Entergy Systems & Service*, were the only members of management at job locations, they independently evaluated employees, they had the authority to initiate promotions, collectively they had the absolute authority to promote an individual, and any crew leader could single-handedly block a promotion. Here the field supervisors cannot initiate any promotion recommendations. Rather, they simply assign a score to an applicant's answer to a predetermined list of questions. The field supervisors also do not have veto authority and only are allowed to be one of the five committee members with the other four members occupying undisputed supervisory and/or managerial positions in the Employer's organization. Under these circumstances, I do not find that the field supervisors possess the authority to promote employees as the crew leaders did in *Entergy Systems & Service*.

**B.) Dispatchers**

The Employer appears to assert that the dispatchers possess the authority to assign work to the drivers. While the record reveals that dispatchers do play some role in assigning the work of employees, that role is primarily ministerial in nature as the dispatcher must adhere to applicable procedures and policies including the drivers' seniority and bidding system and/or the Employer's labor agreement with ATU. While there may be some variations in the assignments, particularly when unforeseen events occur, the record does not reveal what, if any independent judgment is exercised by the dispatcher in this regard beyond calling in casuals who generally are known to work certain days and saving emergency situations for the "extra board" drivers. Thus, it appears that the dispatchers' assignments are routine or clerical in nature and do not require the use of independent judgment.

Similar to field supervisors, the Employer appears to assert that dispatchers possess the authority to discipline. However, as with the field supervisors, dispatchers only function in the discipline process is to record or note when an employee is late or absent and to forward such information onto supervision and/or management without any recommendation. As with field supervisors, such a reportorial function does not rise to the level of supervisory authority.

With respect to the dispatcher's role on the interview committee for open field supervisor or dispatcher positions, my analysis above with regard to the similar role of field supervisors is equally applicable here. Regarding the dispatcher's role with respect to overtime, the Employer did not provide sufficient evidence elaborating on the extent and nature of that role beyond showing that the dispatcher attempts to restrict overtime only after insuring the timely performance of route assignments. In particular, the Employer failed to elaborate on whether Employer supervision/management, the ATU agreement, and/or whether Employer policies and/or practices impact the dispatcher's role in restricting overtime. Accordingly, I cannot leap to a conclusion that the dispatchers have the authority to grant overtime, which requires the use

of independent judgment. Rather, on this record, it is equally plausible that the grant or restriction of overtime is exercised in a routine or clerical fashion.

In view of the above and the record as a whole, I find that the Employer has not met its burden of establishing that field supervisors and/or dispatchers possess indicia of supervisory authority as that term is defined in Section 2(11) of the Act. Thus, I further find that the following unit of employees (hereinafter "Unit") sought by the Petitioner is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field supervisors and dispatchers employed by the Employer in its King and Snohomish County operations; excluding all other employees, managers, guards and supervisors as defined in the Act.

There are approximately 14 employees in the Unit.

### **III.) DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the

election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Association of Machinists and Aerospace Workers, District Lodge 160, AFL-CIO.

**A.) List of Voters**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before July 9, 2004 . No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

**B.) Notice Posting Obligations**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**C.) Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by July 16, 2004 .

**DATED** at Seattle, Washington, this 2<sup>nd</sup> day of July 2004.

/s/ Richard L. Ahearn  
Richard L. Ahearn, Regional Director  
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